

2-1700-8520-2  
E23446

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Janel L. Sausen,

Complainant,

vs.

Crow Wing County,

Respondent.

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the Minnesota Office of Administrative Hearings, on November 23, 1994, in Brainerd, Minnesota, pursuant to a Notice of and Order for Hearing dated February 9, 1994.

Appearances: Joel D. Hedberg, Murnane, Conlin, White & Brandt, Attorneys at Law, 1800 Piper Jaffray Plaza, 444 Cedar Street, St. Paul, Minnesota 55119, appeared on behalf of Janel L. Sausen (Complainant or Ms. Sausen); and Ann L. Goering, Ratwik, Roszak, Bergstrom & Maloney, Attorneys at Law, 300 Peavey Building, 730 Second Avenue South, Minneapolis, Minnesota 55402, appeared on behalf of Crow Wing County (Respondent or County).

The record of this proceeding closed on December 12, 1994, the date of receipt by the Administrative Law Judge of the final post-hearing written arguments.

NOTICE

Pursuant of Minn. Stat. § 363.071, subd. 2 (1992), this Order is the final decision in this case. Pursuant to Minn. Stat. § 363.072 (1992), any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 14.63 - 14.69 (1992).

#### STATEMENT OF ISSUES

The issues for determination in this proceeding are as follows: (1) Whether the Complainant, Janel L. Sausen, subject to unlawful hiring practices by the

Respondent in violation of Minn. Stat. § 363.03, subd. 1(4)(a); (2) if so, v damages, if any, were occasioned by such action; (3) did the Employer discriminate against he Complainant, Janel L. Sausen, in hiring in violation Minn. Stat. § 363.03, subd. 1(2)(a) or (c) (1992); (4) and if so, the damage occasioned by such actions.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. Janel L. Sausen is a married female who resides with her husband and two minor children in the Brainerd, Minnesota area.

2. Sometime in early 1991, Mr. and Mrs. Sausen moved to the Brainerd area where her husband took a position as assistant county attorney under the then county attorney, John R. Graham. County Attorney Graham had defeated a long-term serving incumbent as county attorney.

3. Ms. Sausen is a high school graduate and has approximately 60 credit of junior college training towards a business management associate of arts degree. Ex. 1. Her work history includes the operation of a day care service in Woodbury, Minnesota where she provided activities and curriculum for preschool children. Ms. Sausen has also operated her own typesetting business successfully over a two-year period. Finally, the Complainant is skilled in word processing and computer applications to such activities. Ex. 1, p. 2.

4. The county, in June of 1991, advertised a part-time position as a clinic assistant with the Womens, Infants and Childrens federally funded program operating in the county. The position was for six days of work per month. The person filling the job would be responsible for distributing WIC vouchers and providing clerical services and record keeping related to voucher distribution. The incumbent in the position for which Ms. Sausen applied would have face-to-face contact with WIC services recipients. The position did not, however, encompass counseling recipients of WIC services or, in any way, functioning as a social service provider, other than distributing WIC vouchers.

5. On June 17, 1991, the Complainant filed an application for employment with the Crow Wing County personnel director. Ex. 1. On the application, Ms. Sausen listed as references the following: "Edward Foster, Pastor, Our Lady Lourdes, Pine River, MN 56474", and "Bob Polzak, Asst. County Attorney, 630 and O Drive, Baxter, MN 56401".

6. On June 20, 1991, Ms. Sausen was called to an interview with the County's personnel director, Ziegfried Stier. The interview with Mr. Stier

short and directed entirely toward Ms. Sausen's qualifications for the position. On his interview checklist, attached to Exhibit 1, Mr. Stier states: "Would rate Janel as a good candidate for position, strong office back-ground, has worked extensively with children." Mr. Stier selected several candidates for a positive recommendation to the WIC program director, Ruth Gmeinder.

7. Ms. Gmeinder was hired by the County in March of 1980 as the first WIC coordinator. Ms. Gmeinder has had major involvement in Brainerd civic and charitable activities. At the time of Ms. Gmeinder's resignation in 1994, there were eight employees in the County's WIC program. In 1994, the program had expanded to serve in excess of 1700 clients per month.

8. Mr. Stier favorably recommended five applicants to Ms. Gmeinder for a second interview. The interviews were held by Ms. Gmeinder on June 26, 1994, one after the other. Each interview lasted between 20 minutes and one-half hour. Ms. Gmeinder was alone with each applicant in a closed door setting. Notes of the content of the interviews exist. Ms. Gmeinder did, however, file out an interview report for each applicant listing nine separate qualities and an overall ranking from definitely unsatisfactory to outstanding. Each such interview report prepared contemporaneously by Ms. Gmeinder is attached to the appropriate application for employment in the exhibits.

9. Ms. Gmeinder had developed a list of questions to pose during the interview to use as an outline. See, Ex. 12. Question No. 4 states:

Many of the clientele [sic] we deal with are considered high risk. Some of the women have had abortions late into their pregnancy. Would you have a problem with this? We also see some poor parenting skills. We deal with child abuse and neglect and are mandatory reporters. Would you have a problem with this?

Ms. Gmeinder stated that the question quoted was in her interview outline because some employees of the WIC program in the county had problems dealing with clients who had late-term abortions.

10. The interview with Ms. Sausen began by Ms. Gmeinder discussing the WIC program and describing the job duties. Ms. Gmeinder reviewed with Ms. Sausen her background and experience and how that would apply to the position. Ms. Gmeinder then asked Ms. Sausen how her husband obtained his position with the office of the county attorney. Ms. Gmeinder also asked that with the controversy surrounding the office of the county attorney and the incumbent John R. Graham, how long Mr. Sausen would have his position. She also asked how Mr. Sausen knew Mr. Graham. Ms. Sausen replied that a Catholic priest in Pine River had recommended her husband to Mr. Graham. The priest was a friend of both the Sausen and Graham families.

11. As previously stated, Ms. Sausen had placed on her application for employment an assistant county attorney and Edward Foster, Pastor of Our Lady of Lourdes Church, Pine River, as personal references. She had also listed her reason for leaving her last position her husband's job. Ex. 1, p. 2.

12. Shortly after asking Ms. Sausen about her husband's position, Ms. Gmeinder stated, "I'm Catholic; are you?" Ms. Sausen responded, "Yes". The interview proceeded and the job was further discussed, particularly the part time nature of the position. In the last part of the interview, Ms. Gmeinder cautioned Ms. Sausen not to become involved with the clients personally. Ms. Gmeinder posed Question No. 4, stated on Ex. 12, to Ms. Sausen. Ms. Sausen responded that she would have no problem performing the job duties with respect to a client who had a late-term abortion. Ms.

Gmeinder essentially pressed the inquiry and asked Ms. Sausen if her views on abortion would affect her ability to perform her job. Ms. Sausen responded "No". Ms. Gmeinder then asked a further question of Ms. Sausen as to what the Complainant's personal views on abortion were and would it affect her job performance. Ms. Sausen, who is "pro-life", told Ms. Gmeinder that she felt abortion was wrong except to protect the life of the mother. Ms. Gmeinder terminated the interview after asking Ms. Sausen if she had any further questions. As Ms. Sausen left, she was told that she would be contacted about the hiring decision.

13. Ms. Sausen's views on abortion constitute firmly held moral beliefs and are coincident with the position of the Catholic Church, of which Ms. Sausen is a member. Her views, however, are not dependent on her Catholic faith and were held by her before her conversion to Catholicism, roughly at the time of her marriage.

14. Ms. Sausen did not immediately discuss the interview with her husband or anyone else. She believed, however, that questions related to her husband's job and her moral beliefs on abortion and her religion were entirely inappropriate. Ms. Sausen did not mention the interview to anyone for about two and one-half months. On or about September 16, 1991, she told her husband what had transpired during the interview.

15. Mr. Sausen attempted to discuss the matter with Mr. Ziegfried Stier, the director of personnel for the County. Mr. Stier, however, had no personal knowledge of the content of the interview between Ms. Gmeinder and Ms. Sausen.

16. On June 28, 1991, Ziegfried Stier notified Ms. Sausen by letter that she had not received the WIC clinic assistant position.

17. The person who did receive the position, Gloria C. Langerman, has a high school diploma and a state license in cosmetology. Ms. Langerman has provided day care for her young nephew, has made tackle for fishermen and has functioned for a short time as a temporary teacher's assistant. Finally, Ms. Langerman had worked for the Larco Company, a manufacturer in the customer service area. Ms. Langerman had herself been a WIC services recipient and was quite familiar with the program.

18. In the initial interview checklist, Mr. Stier rated Ms. Langerman the same as Ms. Sausen and placed the following notation on her interview checklist: "Would be a good candidate". Ex. 2, p. 3.

19. On the interview report filled out by Ms. Gmeinder contemporaneous with her interview of Ms. Langerman, her ratings for Ms. Langerman are the same as for Janel Sausen with the following exceptions: Ms. Sausen is rated satisfactory for personality and information about general work field, while Ms. Langerman is rated very desirable for personality and information about

general work field. Ms. Langerman, however, only received a satisfactory for personal appearance, while Ms. Sausen received above average for appearance. The two candidates both received the same rating on the overall evaluation as "definitely above average". Ex. 1; Ex. 2.

20. In early September, Mr. Stier heard a rumor in the courthouse that a member of the county attorney's staff was preparing to sue the WIC program because his wife was not hired for a position. At this point, Mr. Stier



contacted Ms. Gmeinder, who flatly denied asking questions about religion, Ms. Sausen's personal views on abortion or Ms. Sausen's husband's situation with the county attorney's office. Ms. Gmeinder stated she asked Question No. 4 in Exhibit 12 because two employees had quit their jobs because WIC clients had late-term abortions.

21. When Ms. Sausen did not receive the WIC position, she attempted to find alternative employment. Her ability to find alternative work and the amount of wage loss claimed is stated in Ex. 16. Of the total claimed wage loss of \$8,319.72, \$7,453.44 from 12/1/92 to 11/30/94 results from the fact that Ms. Sausen had voluntarily terminated employment to have and raise her second daughter during the child's early infancy. If Ms. Sausen had been able to secure an appropriate part-time job between 12/1/92 and 11/30/94, such as the WIC position, she states she would have been employed during that period.

22. As a result of the questions that were asked of her, Ms. Sausen experienced emotional upset in feeling that she was being judged on her moral belief, religion and her husband's position, rather than her own worth.

23. Mr. John R. Graham's tenure as county attorney in Crow Wing County was marked by pronounced controversy. At the time of the interviews for the WIC position, the office of the county attorney was not providing at least some of the services for the county board and various county departments. Private attorneys were retained.

24. Although Ms. Gmeinder had some minor involvement in "EEOC-type" policy formulation, she had never been specifically trained about the requirements of Minnesota law as they relate to permissible questions to be asked in a job interview.

25. Religious views or personal positions on abortion had never been a problem for WIC employees. No WIC employee had quit his or her position because of difficulty dealing with late-term abortions.

26. At no time during her interview was Ms. Langerman asked any questions about her husband's position, her religion or her views on abortion. Question No. 4 in Ex. 12 was not asked of Ms. Langerman by Ms. Gmeinder. No past applicant for a position related to WIC programs who testified at the hearing had been asked questions about religion, views on abortion or his or her spouse's employment by Ms. Gmeinder.

27. Ms. Gmeinder finally decided to hire Ms. Langerman because her evaluation of Ms. Langerman was roughly equivalent to that of Janel L. Sausen and Ms. Langerman's former status as a WIC recipient and her familiarity with both Ms. Gmeinder and the WIC program would have made her significantly easier to train.

28. Ms. Gmeinder inquired about Ms. Sausen's religion as a prelude to asking her questions about abortion because she suspected that Ms. Sausen had strong anti-abortion opinions that might interfere with her job functioning. Her questions about Ms. Sausen's husband's position with the office of the county attorney were prompted by curiosity and a fear that the adversarial nature of the relationship between the county attorney and some or all members of the county board might impact negatively on the WIC program.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Administrative Law Judge has jurisdiction herein and authority to take the action ordered under Minn. Stat. §§ 14.50 and 363.071 (1992).

2. The Notice of and Order for Hearing was proper as to form, content, and execution, and all other relevant substantive and procedural requirements of law and rule have been satisfied.

3. The Respondent, Crow Wing County, is an "employer" for purposes of Minn. Stat. § 363.01, subd. 17 (1992).

4. The Complainant has the burden of proof to establish by a preponderance of the evidence that the Respondent engaged in unlawful discrimination.

5. The Complainant has established by a preponderance of the evidence violations of Minn. Stat. § 363.03, subd. 1(4)(a) (1992) with respect to prohibited questions regarding religion, creed and marital status.

6. The Complainant has established a prima facie case of a violation of Minn. Stat. § 363.03, subd. 1(2)(a) and (c) (1992), which raises an inference of discrimination in the hiring decision.

7. The Respondent has proffered a reasonable, nondiscriminatory reason for its employment action.

8. The Complainant has not demonstrated that the reason proffered by the Respondent is not credible.

9. The Complainant has not established, by a preponderance of the evidence that the Respondent's conduct in violating Minn. Stat. § 363.03, subd. 1(4)(a) (1992), was a substantial causative factor in its failure to hire the Complainant.

10. Under Minn. Stat. § 363.071, subd. 2 (1992), victims of violations of Minn. Stat. § 363.03, subd. 1(4)(a) (1992) are entitled to compensation for mental anguish and suffering resulting from a discriminatory practice. In this case, the Complainant experienced mental anguish and suffering as a result of the Respondent's conduct and is entitled to compensation for the mental anguish and suffering she has sustained in the amount of \$7,500.00.

11. Under Minn. Stat. § 363.071, subd. 2 (1992) and the standards contained in Minn. Stat. § 549.20 (1992), punitive damages may be awarded for

discriminatory practice where there is clear and convincing evidence that the practice of the employer shows a deliberate disregard for the rights or safety of others. This is not an appropriate case for the imposition of punitive damages.

12. Minn. Stat. § 363.071, subd. 2 (1992) requires the award of a civil penalty to the State where an employer violates the provisions of the Human Rights Act. Considering the seriousness and extent of the violation, the

public harm occasioned by it, the financial resources of the Respondent, and whether the violation was intentional, the Respondent should pay a civil penalty to the State in the amount of the award for mental anguish and suffering, \$7,500.00.

13. Minn. Stat. § 363.071, subd. 1a (1992) permits the Administrative Judge to require the Respondent to reimburse the Charging Party for reasonable attorney's fees. An award of reasonable attorney's fees and costs shall be made upon an appropriate petition to be submitted by the Complainant's attorney demonstrating the amount of time reasonably spent on the case and the hourly rate charged.

14. It is appropriate to allow Respondent to question the reasonableness of the fee petition submitted.

15. Laws of 1992, c. 513, art 9, § 34 provides, in relevant part:

The Administrative Law Judge shall order a respondent who is determined to have engaged in an unfair discriminatory practice to reimburse the department . . . for all appropriate litigation and hearing costs expended in preparing for and conducting the hearing, unless payment of the costs would impose a financial hardship on the respondent. Appropriate costs include but are not limited to the costs of services rendered by the attorney general, private attorneys if engaged by the department, administrative law judges, court reporters, and expert witnesses, as well as the costs of transcripts and other necessary supplies and materials.

16. As a consequence of Conclusions 5 and 15, supra, it is appropriate to assess against the Respondent in this proceeding the total billings of the Office of Administrative Hearings for conducting this proceeding.

17. Any Finding of Fact more properly termed a Conclusion and any Conclusion more properly termed a Finding of Fact is hereby expressly adopted as such.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

#### ORDER

IT IS HEREBY ORDERED:

1. The Respondent shall pay the Complainant, Janel L. Sausen, damages for mental anguish and suffering in the amount of \$7,500.00.

2. The Respondent shall pay a civil penalty of \$7,500.00 to the General Fund of the State of Minnesota. The payment shall be filed with the Commissioner of the Department of Human Rights for submission to the General Fund.

3. Reasonable attorney's fees and costs shall be awarded. The Complainant's counsel shall submit a petition for attorney's fees and costs

within twenty (20) days of receipt of this Order. The petition shall include an affidavit detailing the time spent on the case and the charge per hour. Respondent may submit argument on the reasonableness of the fees and costs requested within twenty (20) days of receipt of the Complainant's petition.

4. The Office of Administrative Hearings shall advise the Respondent of its total charge for conducting this proceeding within thirty (30) days of the date of this Order. The Respondent shall thereafter pay to the Commissioner for the use of the Department of Human Rights that amount so determined.

5. All payments ordered shall be made within thirty (30) calendar days of the date of this Order.

6. The effective date of this Order for purposes of appeal shall be the date on which the Order awarding attorney's fees and costs is issued.

Dated this 11th day of January, 1995.

s/ Bruce D. Campbell  
BRUCE D. CAMPBELL  
Administrative Law Judge

Reported: Tape Recorded; No Transcript Prepared.

#### MEMORANDUM

The Complainant, Janel L. Sausen, asserts two separate types of violations of the Minnesota Human Rights Act. She first asserts that certain questions asked of her in her employment interview violate Minn. Stat. § 363.03, subd. 1(4)(a) (1992), irrespective of whether such questions formed the basis of a later adverse employment decision. She further alleges that the Respondent also violated Minn. Stat. § 363.03, subd. 1(2)(a) and (c) (1992) by actually discriminating against her in its hiring decisions on the basis of prohibited questions asked during the employment interview. The Administrative Law Judge believes that prohibited questions were asked of Ms. Sausen regarding her religion, creed and marital status. The Administrative Law Judge does not believe, however, that the Complainant has borne her burden of proof with respect to the charge that the hiring decision made was merely a pretext for discrimination in hiring in violation of the Minnesota Human Rights Act.

Minn. Stat. § 363.03, subd. 1(4)(a) (1992) makes it an unfair employment practice for an employer to "require or request the person to furnish information that pertains to . . . creed, religion . . . marital

status . . . . Merely requiring the information is a violation of the statute without proof of the use of that information in making a discriminatory hiring decision.

In this case, Ms. Gmeinder, on behalf of the County WIC program, flatly denies questioning Ms. Sausen about her religion, her marital status or her position on abortion, other than asking the question contained in Exhibit 12.



Question No. 4. Ms. Sausen states that Ms. Gmeinder asked her the questions that are reflected in the Findings of the Administrative Law Judge. For the reasons hereinafter stated, the Administrative Law Judge accepts Ms. Sausen's version of the interview as representing a close approximation of what actually occurred. The Administrative Law Judge does not find Ms. Gmeinder credible on her statements about the contents of that interview.

In determining credibility of a witness, it is important first to determine whether the witness has a motive to fabricate an answer or otherwise to testify untruthfully. Ms. Sausen stands to obtain money if her version of the interview is accepted. Ms. Gmeinder, on the other hand, at the time she made her initial statements about the content of the interview, had an interest in maintaining her reputation in the community and her position with the County.

The Administrative Law Judge has accepted Ms. Sausen's version of the interview because some of the statements on the subject matter made by Ms. Gmeinder are demonstrably untrue. Ms. Gmeinder stated that she always asked Question No. 4 on Exhibit 12 of every candidate for a position with the WIC program because two employees had left their jobs over the issue of late-term abortions. Ms. Gmeinder did not, however, ask the successful candidate for the position any questions about abortion, her religion or her husband's occupation or security in his position. Other witnesses testified that they had not been asked a question similar to Question No. 4 of Exhibit 12 prior to their past employment with the WIC program during their interviews with Ms. Gmeinder. Moreover, it was demonstrated that no one had quit their positions with the County WIC program because of opposition to late-term abortions. On the other hand, no detail of the conversations in the interview asserted by Ms. Sausen was demonstrated to be false.

The Administrative Law Judge, therefore, concludes that Ms. Sausen was asked a question regarding her religion. She was asked questions regarding abortion, going far beyond information needed as a BFOQ for the job. Finally, she was asked questions about her husband's position, his longevity in that position and other questions about her marital status in violation of the statute.

The Administrative Law Judge has previously determined that Ms. Sausen's position on abortion constitutes a "creed" within the meaning of Minn. Stat. § 363.03, subd. 1(4)(a). A copy of that decision is attached hereto as Exhibit A and made a part hereof. Hence, Ms. Sausen was asked prohibited questions in each of the three areas noted in violation of Minn. Stat. § 363.03, subd. 1(4)(a) (1992).

The next group of charges by Ms. Sausen is that the information contained in the prohibited questions was a substantial causative factor in the County's failure to hire her in violation of Minn. Stat. § 363.03, subd. 1(2)(a)(c) (1992).

The appropriate analysis for this group of charges is the McDonnell Douglas Corporation v. Green analysis adopted by the United States Supreme Court at 411 U.S. 792, 802-03 (1973). See, Danz v. Jones, 263 N.W.2d 395, 399 (Minn. 1978); Sigurdson v. Isanti County, 386 N.W.2d 715, 719 (Minn. 1986). The approach set forth in McDonnell Douglas consists of a three-part analysis which first requires the complainant to establish a prima facie case of disparate treatment based upon a statutorily prohibited discriminatory factor. Once a prima facie case is established, a presumption arises that t

respondent unlawfully discriminated against the complainant. The burden of producing evidence then shifts to the respondent who is required to articulate a legitimate, nondiscriminatory reason for its treatment of the complainant. If the respondent establishes a legitimate nondiscriminatory reason, the burden of production then shifts to the complainant to demonstrate that the respondent's claimed reasons were pretextual. Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 623 (Minn. 1989). The burden of proof to establish the fact of discrimination remains at all times with the complainant. Fisher Nut Co. v. Lewis ex rel. Garcia, 320 N.W.2d 731 (Minn. 1982); Lamb v. Village of Bagley, 310 N.W.2d 508, 510 (Minn. 1981); St. Mary's Honors Center v. Hicks, \_\_\_ U.S. \_\_\_, 113 S. Ct. 2742 (1993).

The Administrative Law Judge believes that Ms. Sausen has made out a prima facie case of employment discrimination. To show a prima facie case of employment discrimination, a prospective employee must show that he or she was a member of a protected group, that he or she sought and qualified for opportunities the employer made available to others, and that he or she was denied hiring and that after the opportunities were denied, they remained open or were given to other people with his or her qualifications. Butler v. Leadens Investigations and Security, Inc., 503 N.W.2d 805 (Minn. App. 1993) rev. den. The Administrative Law Judge could also find that the prohibited questions asked are direct evidence of discriminatory intent. Sigurdson v. Carl Bolander & Sons Co., 511 N.W.2d 482 (1994); rev. granted.

Once a party has made out a prima facie case of employment discrimination, the burden then shifts to the employer to proffer a legitimate nondiscriminatory reason for its action. Johnson v. Group Health Plan, Inc., 994 F.2d 543 (8th Cir. 1993); Greiner v. City of Champlin, 816 F. Supp. 528 (Minn. 1993). In this case, the County has offered a legitimate nondiscriminatory reason for not hiring Ms. Sausen. Ms. Sausen was ranked about equally with Ms. Langerman, who ultimately obtained the position. The deciding factor in the County's selection of Ms. Langerman was her experience with the WIC program. This would have made it much easier for Ms. Langerman to be trained into the position rather than Ms. Sausen.

Since the County has proffered a legitimate nondiscriminatory reason for its action, the burden then shifts to the Complainant to show pretext or that the reason offered by the County is not worthy of belief and that discrimination motivated the hiring decision. Evans v. Ford Motor Co., 786 F. Supp. 1318 (D. Minn. 1991); Rutherford v. County of Kandiyohi, 449 N.W.2d 457 (Minn. App. 1989); Rademacher v. FMC Corp., 431 N.W.2d 879 (Minn. App. 1989).

The Administrative Law Judge finds the reason advanced by Ms. Gmeinder for the selection of Ms. Langerman to be credible. The candidates were ranked approximately equally overall in two separate interviews by two separate people. Ms. Langerman, however, had experience with the WIC program that

qualified her for the position, uniquely. The Administrative Law Judge concludes that Ms. Sausen has not shown pretext, nor that discriminatory intent more likely than not was a substantial causative factor in the County's hiring decision.

It could be argued that the very asking of the questions in the Findings demonstrates intent to discriminate. The Administrative Law Judge believes more likely that the questions were asked for the reasons stated in

Finding 28, supra. The burden of showing actual discrimination or an intent to discriminate is, as discussed, on the Complainant. The Administrative Law Judge does not find that the Complainant has met that burden by a preponderance of the evidence.

Having found violations of Minn. Stat. § 363.03, subd. 1(4)(a) (1992), appropriate relief must be determined. For the violation established, of course, lost wages is not an appropriate measure of relief, since actual discrimination in the hiring decision was not established. It is still appropriate, however, to award mental anguish and suffering damages to a claimant who has been the subject of a discriminatory practice in an appropriate case. Minn. Stat. § 316.071, subd. 2 (1992). The general purpose of the damages provision is to make victims of discriminatory practices and discrimination whole by restoring them to the same position they would have attained had no discrimination occurred. Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 626 (Minn. 1988); Brotherhood of Railway and Steamship Clerks v. Balfour, 303 Minn. 178, 229 N.W.2d 3, 13 (1975).

The Administrative Law Judge believes that a damage award for mental anguish and suffering in the amount of \$7,500.00 is appropriate. The record supports the conclusion that Ms. Sausen was upset and angry about having been asked the questions at her interview and that caused her concern and worry. The Administrative Law Judge could determine, at the hearing, that the incident had been painful emotionally to Ms. Sausen. Ms. Sausen did not, however, require professional help to recover from her experience. It does not appear, however, that she was severely traumatized or that her relationships with other persons were disrupted.

The Administrative Law Judge does not believe, taking into account the factors stated in Minn. Stat. § 549.20 (1992), that an award of punitive damages is appropriate. The conduct of Ms. Gmeinder occurred because she was concerned about Ms. Sausen's ability to function in the position. There is no evidence that the County knew of Ms. Gmeinder's conduct, sanctioned it in any way or that it is likely to be repeated. Ms. Gmeinder has voluntarily resigned.

Minn. Stat. § 363.071, subd. 2 (1992) also requires the imposition of a civil penalty payable to the State. The Administrative Law Judge has considerable discretion in assessing a civil penalty. Considering the factors stated in the statute, it appears appropriate that the civil penalty awarded by the State be in same amount as the award for mental anguish and suffering, \$7,500.00.

Under Minn. Stat. § 363.071, subd. 1a (1992), the charging party, if successful, may recover reasonable attorney's fees in a 180-day case. The Administrative Law Judge finds that applying Minn. Stat. § 363.071, subd. 1a (1992) to this case is appropriate. With his brief, counsel for the Charging

Party has submitted an affidavit of attorney's costs and fees. The Administrative Law Judge requires, however, a motion with more detailed substantiation, including hours spent and the rate charged per hour. It is also appropriate to give the Respondent an opportunity to comment on the reasonableness of the fees requested.

Should the County agree, however, that the amount requested by counsel for Respondent is appropriate without further substantiation, it may voluntarily pay that amount and avoid further proceedings before the Administrative Law Judge to determine the appropriate amount of costs and attorney's fees.

B.D.C.